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PRESIDING OFFICER'S
RULING NO. R97-1/85

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING
ON POPKIN'S MOTION TO COMPEL

(January 7, 1998)

On December 22, 1997, David Popkin, an intervenor, filed a Motion to Compel, (Motion) in this docket asking that Postal Service be compelled to answer a number of interrogatories. The Postal Service responded to this Motion on December 29, 1997 in its "Opposition of the United States Postal Service to David B. Popkin's Motion to Compel Responses to DBP/USPS Interrogatories," (Opposition).

DISCUSSION

Mr. Popkin's Motion seeks to compel answers to interrogatories 19(a), 69-71, 96(a), 98 and 103-343. These interrogatories concern a variety of subject matters and I will organize my discussion accordingly.

Interrogatory 19(a) seeks revenues and expenses from philatelic sales over the past ten years. This interrogatory has previously been the subject of other motions to compel filed by Mr. Popkin on November 10, 1997 and November 20, 1997. In response to these motions, the Postal Service filed a library reference with the information it has concerning revenues and expenses from philatelic sales. Although Mr. Popkin finds it difficult to believe, the Postal Service still maintains that it does not

have the data Mr. Popkin seeks. Opposition at 6; Motion at 5. Mr. Popkin will have to be satisfied with what has been provided in library reference H-314.

The Postal Service answered interrogatories 69-71 on December 24, 1997, so Mr. Popkin's motion with respect to these interrogatories is moot.

Interrogatory 96(a) asks why the Postal Service's answer to DBP/USPS-6(p), concerning the times for the collection of mail, was not an "unqualified yes." The Postal Service contends this interrogatory is argumentative. Objections of the United States Postal Service to Interrogatories of David Popkin, filed December 23, 1997, at 1. I believe Mr. Popkin would simply like further explanation of the Postal Service's response. Given that this is not an unreasonable request, the Postal Service should elaborate on its previous response.

Interrogatory 98 follows up on Mr. Popkin's prior interrogatories DBP/USPS 7(n-o). These inquired about the Postal Service's solicitation of public comments on potential changes in delivery standards. The Postal Service's position is that "questions related to whether the Postal Service has or should solicit public comments regarding changes in delivery standards are not relevant to the costing and pricing issues before the Commission." *Id.* Information gathered concerning the public's views on delivery standards could be relevant to an evaluation of the value of service provided to mailers. Hence, the Postal Service should answer interrogatory 98.

Mr. Popkin's "follow-up interrogatories" 103-343 were filed on December 1, 1997. The multi-part questions essentially commission studies of return receipt and Express Mail at the behest of Mr. Popkin. Interrogatories 103-171 ask detailed questions about the handling of return receipts when mail is delivered to the IRS, FCC and state tax agencies for all fifty states. Interrogatories 172-257 ask if District Managers took a proactive approach in response to the Sandra Curran letter of August 1, 1996 concerning the proper handling of return receipt mail. Finally, interrogatories 258-343 would require that the Postal Service conduct inquiries at all postal districts to determine if there are provisions in place to ensure overnight or second day delivery of Express Mail 365 days a year.

Mr. Popkin is concerned that return receipts are often completed after the mail is accepted and that the date on the return receipt is inaccurate. Mr. Plunkett has acknowledged that return receipts may be delivered to the IRS and signed later. Opposition at 2; Tr. 3/1031-32. Mr. Popkin argues these interrogatories (103-257) are proper as follow-up to his oral cross-examination of Mr. Plunkett. Motion at 1.

In opposition, the Postal Service seeks to avoid answering interrogatories 103-257 by arguing that the handling of return receipts is irrelevant to the fee proposed for return receipts because the Postal Service does not justify its fee for return receipts by claiming a high value of service for return receipts. Opposition at 2.

Mr. Popkin does not argue that the Express Mail interrogatories are follow-up to earlier discovery. Motion at 4. He simply says that they "attempt[] to show that the promised level of service does not exist." *Id.* The Postal Service objects on grounds of burden, timeliness and relevance. Opposition at 3-5. With respect to relevance, the Postal Service contends these interrogatories do not "directly concern the level of service for Express Mail" and "responses to these interrogatories . . . only reveal the extent of Postal Service procedures to monitor Express Mail deliveries." *Id.* at 5.

The Postal Reorganization Act directs the Commission to consider "the value of the mail service *actually* provided." 39 U.S.C. 3622(b)(2) (emphasis provided). Certainly, an evaluation of the level of service provided to mailers is material to this consideration. However, these questions are not timely follow-up to discovery on the Postal Service's direct case, which ended on September 17, 1997. Mr. Popkin contends interrogatories 103-343, filed December 1, 1997, are proper under Special Rule 2E. Motion at 2-3; Presiding Officer Ruling R97-1/4, Attachment B. In response to Mr. Popkin, the Postal Service argues that Rule 2E is generally for discovery aimed at developing information for rebutting cases of participants other than the Postal Service. Objection of the United States Postal Service to Interrogatories of David Popkin, filed December 11, 1997, at 1-2.

The Commission adopted Rule 2E to enable a participant to obtain information available only from the Postal Service for the purpose of developing rebuttal testimony.

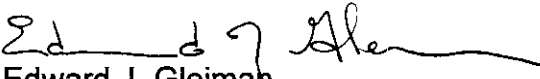
However, it is generally not available for the purpose of developing testimony to rebut the direct case of the Postal Service. See Presiding Officer's Ruling MC96-3/36 at 2. If Rule 2E were available for this purpose, the discovery cutoff date would have little meaning.

Mr. Popkin's interrogatories are not for the purpose of rebutting the presentation of another participant. Interrogatories 103-343 concern the level of service provided by the Postal Service and are aimed at challenging the Postal Service's direct case by showing that the level of service is lower than the Postal Service claims.

Moreover, as a practical matter, there is no reason these discovery requests could not have been filed earlier. Mr. Popkin cross-examined witness Plunkett concerning the same return receipt issues on October 7, 1997. The Express Mail interrogatories could have been filed anytime between July and September as they do not purport to "follow-up" on Postal Service interrogatory responses. For these reasons, I must deny Mr. Popkin's motion with respect to interrogatories 103-343.

RULING

The David B. Popkin Motion to Compel, filed December 22, 1997, is denied with respect to interrogatories 19(a), 69-71 and 103-343. It is granted with respect to interrogatories 96(a) and 98.


Edward J. Gleiman
Presiding Officer